THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 10215 of 2007

O R D E R: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to the order dated 3.5.2007 passed in O.A. Nos. 964 of 2005, 1016 of 2005 and 2976 of 2005 on the file of the A.P. Administrative Tribunal and to quash the same.

The unofficial respondent No.4 herein filed O.A.Nos. 964 of 2005 and 2976 of 2005 before the Tribunal challenging the Proceedings No.DAW/Sn.I/A3/2004-05/861 dated 24.2.2005 passed by the Director of Works Accounts, Works & Projects, Andhra Pradesh, Hyderabad and Proceedings No. JDWA/W&P/OGL/Admn/2005-06/88 dated 20.6.2005 and to direct the respondents therein to consider his case for promotion to the post of Superintendent with effect from the date on which the petitioner No.1 herein was promoted. The unofficial respondents 5 and 6 herein filed O.A. No. 1016 of 2005 challenging the Proceedings No. DAW/Sn.I/A3/2004-05/861 dated 24.2.2005 and Proceedings No. JDWA/NSP/HC/Admn/M2/2004-2005/202 dated 2.3.2005.

The case of the unofficial respondents before the

Tribunal, inter alia, was that one P. Naga Pradeep had earlier filed O.A. No. 111001 of 2002 before the Tribunal questioning his placement at Sl.No. 9 in the final seniority list of Senior Assistants of Zone-II dated 4.12.2002 issued by the Joint Director of Works Accounts, Nagarjuna Sagar Project, Hill Colony. The said O.A. was dismissed by the Tribunal stating that it is not maintainable since it has been filed without availing the statutory remedy of appeal under the A.P. State and Subordinate Service Rules. The said Naga Pradeep filed W.P. 15638 of 2003 before this Court and the same was disposed of upholding the orders of the Tribunal in O.A. 11001 of 2002, but he was given three weeks time to file statutory appeal. The unofficial respondents further contended before the Tribunal that even though the High Court directed P. Naga Pradeep to file statutory appeal within three weeks and the official respondents were directed to consider and dispose of the same, it does not enable the statutory authority to consider such an appeal since it has been filed beyond the period of statutory limitation under the General Rules. It was further contended that the appeal filed by P. Naga Pradeep was barred by time and therefore the same stands hit by Rules 23 and 26 of the A.P. State and Subordinate Service Rules. The Tribunal accepted the said contentions and allowed the said O.As., and directed the respondents therein to consider the cases of the applicants as well as the unofficial respondents based on the final

seniority list issued in proceedings dated 4.12.2002. Aggrieved, the petitioners filed this writ petition.

Heard the learned counsel for the parties and perused the material available on record.

As could be seen from the material available on record, the Tribunal has allowed the O.As., filed by the unofficial respondents herein mainly on the ground that the appeal filed by the petitioner No.1 is time barred as per Rule 26. However, it is submitted by the learned counsel for the petitioners that appeal lies against seniority and there is no limitation for filing of appeal and Rule 26(d) deals with an issue where a claim for restoration of seniority and notional seniority is sought by an aggrieved person and as per this Sub Rule no claim for restoration of seniority or notional seniority can be made after 90 days from the date of promotion of a junior and, therefore, except for the contingency provided in Sub Rule (d), General Rule 26 does not fix time limit for preferring appeal. It is also the case of the petitioners that the provisions in General Rule 26(d) have no application to the facts of the case as no promotions were made promoting juniors to the petitioners. We find force in the submission made by the learned counsel for the petitioners.

Having regard to the facts and circumstances, the finding of the Tribunal that the appeal preferred by the petitioner No.1 herein is time barred has to be set aside and it is accordingly set

aside and the matter is remitted to the Tribunal to be heard afresh on merits and to dispose of the same in accordance with law within a period of two months from the date of receipt of a copy of this order. Till such time, the interim suspension granted by this Court on 23.5.2007 shall continue.

The writ petition is accordingly allowed and the matter is remanded to the Tribunal as above.

T. MEENA KUMARI, J.

G. CHANDRAIAH, J.

Date: 23-07-2007.

MVB.